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ABSTRACT

The ongoing controversy over whether to permit television cameras to cover courtroom trials has generated a variety of responses from the judiciary, the bar, and the media. In an attempt to determine whether individuals are affected by the awareness that they are being televised, this study, while maintaining experimental control, simulated some of the pressures placed on witnesses in a courtroom setting. Subjects, 36 volunteers enrolled in a media-and-society class at the University of Wisconsin, were shown a brief film and then were asked specific questions about the content of the film. While answering these questions, some subjects faced a conspicuous television camera which was purported to be recording their answers for viewing by a large number of people, some faced an unobtrusive camera hidden behind a mirror, and some faced no camera at all. The subjects' answers were recorded and the content analyzed. No significant differences were found between the verbal behavior of respondents who faced a hidden television camera and the behavior of those who did not face a camera. However, those who faced the obtrusive camera talked longer, used more words, paused less, and included more information in their answers. There were no differences in the amount of incorrect information in the answers. (LL)

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The Effects of Being Televised:

An Experimental Test

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The Effects of Being Televised:
An Experimental Test

"Free press and fair trial" has become an umbrella term covering a host of concerns and controversies involving journalists, lawyers, and the judiciary. Under this topic few issues have been as intensely debated as the question of whether journalists' cameras and other electronic equipment should be permitted inside courtrooms during trials.

For the most part the judicial and legal professions have opposed such devices in courtrooms whereas journalists and their professional organizations have argued against restricting any type of media coverage of public trials.

Much of the debate stems from the 1930s when, in reaction to photographic coverage of the Bruno Hauptman trial, the American Bar Association passed Canon 35 of its Canons of Professional Ethics.[1] The Canon, passed at the organization's 1937 convention, originally read, in part, "The taking of photographs in the courtroom during sessions of the court or recesses between sessions, and the broadcasting of court proceedings, are calculated to detract from the essential dignity of the proceedings, degrade the court, and create misconceptions with respect thereto in the mind of the public, and should not be permitted."[2]

In 1952 the ABA amended Canon 35 to specifically include a prohibition against television coverage of courtrooms,[3] and added the clause, "distract the witness in giving his testimony," as an additional danger of permitting photographers in courtrooms. Then in 1963 the ABA omitted the words "are calculated to" and "degrade the court."[4] A canon of the ABA, of course, has no legal standing, but the ABA members worked to enact the canon into state laws or court regulations and succeeded in implementing some form of prohibition of broadcasting, televising, or photographing a trial in virtually every state.[5]

Further impetus was added to the issue on June 7, 1965 when the Supreme Court of the United States overturned the Texas swindling conviction of Billie Sol Estes on the grounds that Estes had failed to receive a fair trial because his Texas trial had been televised.[6] The various justices' opinions in the 5 to 4 decision represented most of the principal arguments which had been raised since the original passage of Canon 35.

The court's majority emphasized not so much the physical distraction of cameras and photographers in the courtroom as they did the psychological distraction of participants in a trial knowing they are being televised. In the majority opinion Justice Tom Clark wrote, "The impact upon a witness of the knowledge that he is being viewed by a vast audience is simply incalculable. Some may be demoralized and frightened, some cocky and given to overstatement; memories may falter, as with anyone speaking publicly, and accuracy of statement may be severely undermined...."[7] And Chief Justice Earl Warren, in a concurring opinion, wrote, "The evil of televised trials...lies not in the noise and appearance of the cameras, but in the trial participants' awareness that they are being televised...."[8]

The dissenting justices generally agreed with the traditional positions held by journalists. Justice Potter Stewart, in the dissenting opinion, wrote, "The suggestion that there are limits upon the public's right to know what goes on in the courts causes me deep concern. The idea of imposing upon any medium of communications the burden of justifying its presence is contrary to where I had always thought the presumption must lie in the area of First Amendment freedoms...."[9] And Justice Byron White, arguing for more data on the issue, wrote, "In my view, the currently available materials assessing the effect of cameras in the courtroom are too sparce and fragmentary to constitute the basis for a constitutional judgment permanently barring any and all forms of television."[10]

Trial judges seem to have taken the Estes decision to heart despite the narrowness of the decision. A Madison, Wisconsin, judge ruled against televising a taxpayers' suit against the city primarily because of the Estes decision.[11] A 1970 survey of trial judges from throughout the country reported that 92% of the 483 judges polled believed television cameras should not be permitted to operate in courtrooms during trials.[12]

Despite the generally discouraging climate for trial coverage by television, however, a number of recent developments have given broadcast journalists some encouragement. In 1970 National Educational Television carried extensive excerpts of a trial filmed in Denver. At the time Colorado was one of two states which permitted judges to decide if cameras could operate in their courtrooms. The program, entitled "Trial: City and County of Denver vs. Lauren R. Watson," was serialized by the network and shown nightly for a week. In 1971 a Wichita, Kansas judge permitted KAKE-TV of Wichita to film a juvenile court hearing. The station used the film in its newscasts and the judge, in supporting his decision

to allow the television coverage, said, "We must be smart enough to be able to establish a system whereby the public can be informed and the judicial decorum maintained."[13]

Recent movements toward a more accomodating position regarding television coverage of trials extend even beyond these experimental cases. In Seattle, following experimental coverage of a manslaughter trial (The coverage was not actually telecast.) a committee of judges, lawyers, and journalists, chaired by the chief justice of the Washington Supreme Court, recommended in 1975 that Washington state courts be opened to broadcast coverage.[14]

The Florida Supreme Court recently agreed to permit television cameras in some state courtrooms. The experiment, which has been opposed by the Florida Bar Association, involves an initial test of one civil and one criminal case in which all parties to the trial and witnesses must consent to being televised.[15] And in Alabama, the state's supreme court adopted new "Canons of Judicial Ethics" which could open courtrooms in that state to broadcast coverage.[16] In a "Commentary" section, the Canons say, "It is now universally recognized that the dignity of a church service is not affected in any degree by photographing or broadcasting by television or radio...when sophisticated and advanced equipment and technology is used."[17]

The overall controversy about cameras in courtrooms is unusual for the a lack of specific data which have been brought to bear on the questions raised. When two U.S. Supreme Court Justices suggest, in opinions, that during televised trials witnesses' memories may fail and the accuracy of their statements may diminish, one expects to find compelling supporting data. But such evidence has not been systematically produced. The current study attempted to experimentally test that speculation, to determine if, in fact, individuals are affected by the awareness that they are being televised.

The study simulated some of the pressures placed on witnesses in a courtroom setting while at the same time maintaining experimental control so the results could be meaningfully analyzed. Subjects were shown a brief film containing rather detailed information, then were asked specific questions about the content of the film. While answering the questions they were either facing a conspicuous television camera purportedly recording their answers to be viewed by a large number of people, or an unobtrusive camera hidden behind a mirror, or no camera at all.

Based on the assumptions obvious in the reasoning of Justices Clark and Warren it was predicted that when they were televised (whether by an obtrusive or unobtrusive camera) the participants would recall significantly less correct information about the film than when they were not being televised. Because a number of the recent proposals for courtroom coverage by television have mentioned that cameras should be camouflaged,[18] the unobtrusive camera condition was included to determine the effects of hiding the camera.

Method

Subjects were 36 volunteers enrolled in a media and society class at the University of Wisconsin, Madison. The course, being offered during the summer session, contained a highly heterogeneous student population, consisting of a mixture of undergraduates, graduate students, and special students on campus only for the summer. It also included a number of military personnel participating in the school's annual public relations institute.

Each subject participated individually in an experimental session which lasted about 15 minutes. When subjects arrived at the experimental room they were met by the experimenter, an undergraduate female unknown to the participants.

Subjects were seated at a table near the center of a large room and told the study was an attempt to assess the "effectiveness of some different types of media presentations." Their only other initial instruction told them they were going to see a brief film "containing a feature story recently used by a number of television stations."

All subjects were then shown a 2-minute color film describing the operation of the Federal German Post Office in West Berlin. The film described the various functions of the post office, such as operating telephone and telegraph services, banking, radio and television transmissions, intercity buses, and the mail. The film was selected because it contained a substantial amount of specific, detailed information and was a subject most likely unfamiliar to the participants in the study. As it turned out, one of the military students had been stationed in Berlin and was familiar with the post office there. He was dismissed as a subject and his responses discarded.

After viewing the film there was a pause of a few minutes after which the subjects were given some general instructions repeating much of what they had been told at the start of the session. Then the experimentar said, "I now have a few questions to ask you about what you have just seen. Please answer each as directly as you can." This was the first hint the subjects had that they were going to be required to answer specific questions about the content of the film. The experimenter then mentioned that she would take notes about their answers. From this point on the treatment varied according to condition. The subjects had initially been assigned randomly to one of three conditions: (a) obtrusive camera condition, (b) unobtrusive camera condition, and (c) no camera condition.

In the obtrusive camera condition a television camera was situated in the room in front of the subjects and to the side of the experimenter. The lens of the camera was pointed directly at the subjects. In this condition the experimenter included, as the final part of the instruction, "We have a television camera operating here which is connected to a videotape recorder so we can record your answers. These videotapes will be used as part of a follow-up study in the fall and at that time will probably be seen by a large number of people." The final sentence was included to add to the realism of the setting, causing the participants to actually believe that their performances would be seen by others.

In the unobtrusive camera condition the same television camera was located in the same spot, but a full-length mirror was placed in front of the camera so it could not be seen from the respondents' chair. The instruction was the same as that received by those subjects in the obtrusive camera condition, except it said, "We have a television camera operating behind this two-way mirror. The camera is connected to a...."

In the no camera condition the camera was simply removed from the room and no mention was made of it in the instructions which read simply, "I'll be jotting down a few notes about your answersbecause they will be used as part of a follow-up study in the fall, and at that time will probably be seen by a large number of people." It was felt it was important to create the same belief that even though there was no camera, just as in an actual courtroom situation, the participants should be aware that their answers would be widely circulated even though not electronically recorded in the courtroom.

Each subject was then asked six specific questions about the content of the film. The questions and answers were recorded for subsequent analysis on

an audio cassette recorder hidden from the subjects' view. The questions were developed and pre-tested for clarity, precision, and comprehensiveness. Two of them were: "What services are handled by the Federal German Post Office?" And: "What do humans need to do in the sorting and distributing of letters in the computer-controlled post office in West Berlin?"

After the questions were asked and the answers recorded, the subjects were dismissed and asked to not discuss the study with their classmates. All testing was completed in four consecutive days, thus minimizing the opportunity for discussion among past and future participants.

Results

Coding: Coders carefully listened to the audio tapes of the answers to the six questions, coding a number of items, both in terms of speech characteristics and content. For example, using stop watches, they coded such things as latency (time from end of question until start of answer) and total time talking. Coders also counted the number of words generated by each subject in answering the questions and the number of times each asked for clarification.

Prior to the actual coding a list was compiled which included all possible correct answers for each of the six questions. The coders then checked each component of each answer against this list and coded each part of each answer as either correct or incorrect.

The tabulating of the times was done by a single coder, with a second coder independently timing a sample of the respondents to check for accuracy of coding. The two coders agreed with each other within one-half second on all timings, thus establishing the accuracy of the coding. Two coders independently did all the content coding and they agreed with each other in 92% of the cases. For those on which they disagreed a compromise code was reached.

Analyses: With 12 subjects in each of the three conditions, a series of one-way analyses of variance was conducted, using each of the dependent variables of interest in the study.

Correct information in answers: Those subjects who faced the obtrusive television camera included more correct information in their answers than did those in either of the other two conditions ($F=4.63, df=2/33, p<.025$). The mean amount of correct information contained in all six answers for those in the obtrusive camera condition was 20.17, compared to 16.33 for those in the hidden camera condition, and 16.83 for those who faced no television camera.

Incorrect information in answers: There were no significant differences between conditions in terms of the amount of incorrect information the subjects provided in response to the questions ($F<1$).

Length of answers: Again, subjects in the obtrusive camera condition behaved differently. Those who faced the conspicuous camera spoke for a longer time in answering the questions than did the subjects in the other two conditions ($F=5.35, df=2/33, p<.01$). The mean total answer length for those in the obtrusive camera condition was 36.50 seconds, compared to 28.21 seconds for those facing the hidden camera and 29.71 seconds for those not confronting a camera at all.

Number of words in answers: In a closely related measure, subjects in the obtrusive camera condition also used more words in composing their answers than did subjects in the other two conditions ($F=4.96, df=2/33, p<.025$). The mean number of words for those facing the obvious camera was 70.25, for those facing the hidden camera was 60.50, and for those not facing a camera was 56.17 words.

Latency: In addition to speaking for a longer time and using more words, those subjects facing the obtrusive television camera also waited for a shorter

time before beginning to answer the questions ($F=7.62, df=2/33, p<.01$). Thus they began to generate their answers more quickly after the questions were asked than did the subjects in the other conditions. The mean total latency scores for those subjects in the obtrusive camera condition was 17.75 seconds, for those in the hidden camera condition it was 20.42 seconds, and for those in the no camera condition it was 22.88 seconds.

Clarification: The one other measure used in the study, the number of times the subjects asked for clarification of a question, yielded no differences between the three conditions ($F<1$).

Discussion

In an experiment simulating many of the pressures and expectations faced by witnesses in courtroom trials, the current study found no significant differences in the respondents' verbal behavior when they faced a hidden television camera as compared to when no camera was present. Thus the assumption that when faced by a television camera, persons' memories may fail, etc. was not supported.

In fact, if the television camera was hidden from the sight of the "witness," the presence of the camera seemed to be irrelevant. It was as if when the camera was out of sight it was also out of their thoughts and concerns.

But what about the effects of the obtrusive camera? Are there any reasons for concern? Some of the more mechanical effects, such as talking longer, waiting less time after a question, etc. are not particularly surprising. People apparently feel more compelled to speak more and to pause less when they are conspicuously aware they are being televised.

The key question, however, is: What is contained in those additional words they speak? Do those words contain irrelevant information, incorrect

information, or do they contain more of the type of information the courts seek to obtain, i.e., correct information to more fully answer the questions?

The data from the current study provide a clear answer to that question. The longer answers do not contain additional incorrect information. What they do contain is significantly more correct information directly relevant to the questions. It is this finding which has the broadest implications for courtroom coverage by television.

These data indicate that far from being a danger and a potential hindrance to a fair trial, in this context television cameras can, in fact, lead to a fairer trial. Because the witnesses could be expected to generate more complete and more correct information in response to the questions from the various attorneys, both sides should benefit from the increased information on which the court's decision could be reached.

This study, admittedly, was an experimental approximation of some of the key aspects of the courtroom environment. It was not, quite obviously, a trial itself. The definitive test, of course, is impossible. The same trial couldn't be conducted twice simultaneously with all conditions the same except for the use of television to cover one. What the current study did was to provide some original systematic data bearing on the significant overall question of the effects of camera coverage of courtroom trials.

Only through additional studies such as this one and through a number of the tests which have been scheduled or held in various states can the years of speculation over this issue be replaced with the needed data base on which to develop sound free press and fair trial policies.

Footnotes

1 P. Hightower, "Canon 35 Remains Same Despite Courtroom Tests," Journalism Quarterly, 52:546-548 (Autumn 1975).

2 American Bar Association Canons of Judicial Ethics, "Canon 35: Improper Publicizing of Court Proceedings," Journal of Broadcasting, 12:18 (Winter 1967-68).

3 Special Committee on Radio and Television of the Association of the Bar of the City of New York, Radio, Television and the Administration of Justice (New York: Columbia University Press, 1965), pp. 144-145.

4 American Bar Association Canons of Judicial Ethics, op. cit.

5 H. L. Nelson and D. L. Teeter, Jr., Law of Mass Communications (Mineola, N. Y.: The Foundation Press, Inc., 1969), p. 256.

6 American Newspaper Publishers Association, Free Press and Fair Trial (New York: ANPA, 1967), pp. 123-132.

7 Radio, Television and the Administration of Justice, op. cit., p. 201.

8 Ibid., p. 217.

9 Ibid., p. 248.

10 Ibid., p. 249.

11 J. M. Ripley, "An Argument for Television in the Civil Courtroom," Journal of Broadcasting, 12:23-31 (Winter, 1967-68).

12 F. S. Siebert, W. Wilcox, G. Hough III, Free Press and Fair Trial (Athens, Ga.: University of Georgia Press, 1970), pp. 106-110.

13 Hightower, op. cit., p. 548; "TV News Cameras in Another Court," Broadcasting (October 11, 1971), p. 52.

14 "Foot in Courtroom Door," Broadcasting (June 16, 1975), p. 45.

15 "TV in Courtrooms," News from Associated Press Broadcasters (January 1976), p. 8.

16 "Alabama Adopts Judicial Ethics Which Could Open Courts to TV," RTNDA Communicator, 30:1 (January 1976), p. 1.

17 Supreme Court of Alabama, "Canons of Judicial Ethics," Sect. 7, Commentary, pp. 10-11.

18 Hightower, op. cit.